

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

PHAN HUE, Pro Se) CIVIL ACTION-LAW JUN 04 2002
Plaintiff)
vs.) NO#1:CV-01-1064
JAMES UPDIKE, P.A., JOSEPH) (JUDGE YVETTE KANE)
MATALONI, EDWARD O'BRIEN,) (MAGISTRATE SMYSER) ✓
DALE HAZLAK;) JURY TRIAL DEMANDED
Defendant's)

MARY E. O'NEALE, C
Per JULIE Deputy Clerk

MOTION TO STAY PROCESS PENDING
ASSIGNMENT OF APPOINTED COUNSEL TO ASSIST
FOR PREPARATION OF INTERROGATORIES AND TO
ASSIST FOR PREPARATION OF TRIAL

TO THE HONORABLE THE JUDGE AND JUDGES OF SAID COURT:

COMES NOW, Plaintiff, Phan Hue, and respectfully hereby, moves this Court in this connexion for the Stay of Process and Abatement of all process pending the Appointment of Counsel to assist for Interrogatories, Discovery and preparation for trial by jury and/or Summary Judgment stages, and respectfully avers in support hereof:

1. That, Plaintiff, Phan Hue is an adult male individual incarcerated at the locale of SCI Retreat, #660 State Route 11 Hunlock Creek, Pa., 18621-9580.
2. That, Plaintiff presently was assisted by two prior inmate(s) commonly known as "Jailhouse Lawyers" and both inmate's have either left on parole or been released from confinement.
3. That, Plaintiff lacks command of the English Lingua and speaks little to none of spoken broken English." Thus your Plaintiff has already proven to this Court he has no education in America, has not graduated from school, speaks vietnameese language, has no type of knowledge of the law or the requirements to partake in such a concept.

4. That, Plaintiff based upon his language handicapp, lack of reading, writing, and/or understanding of our language simply does not have the ability to answer or respond with any intelligent answer's as to what the defendant's request prior to the Appointment of a Counsel." Moreoverly, the defendant's have already requested of this Court to dismiss said matter & said Court has denied the defendant's motion and ruled in the favor of this inmate to have stated "prima facie" of a cause of action under 42 U.S.C. §1983, Civil Rights Act of 1871 and 12 (B)6).

5. That, Plaintiff requested of your Honorable Court to accord him appointment of Counsel, and said request was examined and further granted upon the plaintiff's carefully tailored handicapps." Up to present the plaintiff has yet to receive any Counsel and further his prior assistant's have left him. Absent of abatement of this matter pending the assignment of Counsel would deny this plaintiff of a fair and impartial process. Moreoverly, would be to put the cart before the preverbial horse, a would also be to reverse the Constitutions." Said inmate simply can not continue to rely upon inmate's based upon their is a unstable relationship and the defendant's have a habit of retaliating against jailhouse lawyers." For example see Richard Carter vs. Dragovich, Klem, Capt. Grady of SCI Monahoy, U.S. DISTRICT COURT, EASTERN DISTRICT "LEXIS" 2001." As in this action the inmate's who do help Phan Hue receive reprimand, warnings and taking of legal papers." Clearly this violates Johnson vs. Avery, U.S., Sct. and the First Amendment, 14th Amendment based upon Hues language handicapps."

6. That, said request for abatement until Counsel is warranted and in the interest of justice. For the convenience of this Court it is respectfully requested of your Honor to simply Appoint Samuel C. Stretton, Esq. of 301 South High Street, West Chester, Pennsylvania, who is a licensed Counsel with the United States and Pennsylvania Bar Association."

7. That, annexed hereto is a true and correct copy of Plaintiff's letter to this Court on the request to answer interrogatories of the Defendant's." Further to compel the plaintiff to answer any of said questions will require the defendant's to procure the services of a interperator to answer of such absent of any Counsel." Further to compel a inmate in such a position to try and answer of such would deny the fair administration of justice in said matter and thereby, cause a impartial process.

8. That, Plaintiff is requesting abatement of said process until Counsel is provided. Surely the defendant's sole intention to compel answers is to take advantage of this inmate and manipulate his cause of action to be dismissed and continue to deprive him of medical treatment and surgery." Surely, the defendant's have a bilateral contract and failure to accord the treatment voids said contract and warrants relief to this inmate for the total violations of his third party beneficiary rights. For these reasons we ask this Court to abate this matter and appoint Samuel Stretton or in alternative issue a Injunction/T.R.O. which will allow John Doe #1 to continue to assist this Plaintiff with said matter absent of retaliations, bad parole recommendations, or imposing of any misconducts and prohibiting of taking of legal papers."

9. That, said request is to serve the Constitutional Mandates to be accorded to inmate/plaintiff, Phan Hue."

10. That, Plaintiff further avers the defendant's not only are in violation of his rights given by the Constitutions; They are also in violation of the Contractual Agreement of Prison Health Care Services and all parties thereto who entered that contrat to provide Phan Hue medical treatment under the States Obligation. Also the defendant's are of course in violation of the Pennsylvania Administrative Codes of Title 37 and its contents on issue's raised in this litigation."

11. That, Plaintiff is sure that this Court understands the defendant's are clearly trying to manipulate this situation on his vietnameese handicapps." Further, prior to any type of Appointed Counsel to appear and to compel Phan Hue to answer the defendant's interrogatories would clearly be an abuse of discretion based upon Hue doesn't have intelligence to answer them on his own based on his handicapps." Moreoverly, the Plaintiff needs his Discovery, just like the Defendant's do to properly prepare and answer the questions in the interrogatories Absent of such would be able to be used at crucial adjudications against the plaintiff for impeachment purposes." In the event this Court does not warrant this abatement motion and 30 day extension to resolve the discovery disputes, the defendant reserves the right to amend his interrogatories and any answers of jailhouse barrister's for Phan Hue should not be able to be used against Phan Hue at the time of trial." Further based on these disputes between parties summary judgments should be denied and this case scheduled for a trial by jury. The evidence, affidavits, testimony of witnesses, interrogatories and discovery is for a jury to decide at the time of trial to make its conclusions and decisions."

WHEREFORE, Plaintiff, PhanHUE respectfully moves this Court to entitle him Counsel as set forth and place this matter in abatement until Counsel is of appearance of said matter, with a immediate stay of all motions, process, answering of interrogatories and/or any other disputed issues through Orders."

Respectfully Submitted,

Phan Hue, by and through
John Doe #1
his interperator.

Needs Abatement and Translator/Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHAN HUE, Pro Se) CIVIL ACTION-LAW
Plaintiff)
vs.) NO#1:CV-01-1064
)
JAMES UPDIKE, P.A., JOSEPH) JUDGE YVETTE KANE
MATALONI, EDWARD O'BRIEN,) JUDGE SMYSER
DALE HAZLAK;) AFFIDAVIT
Defendant's

COMMONWEALTH OF PENNSYLVANIA)

:ss:

COUNTY OF LUZERNE)

I "John Doe"(A/K/A), being duly sworn, deposes and says: I am a inmate held incarcerated at the locale of SCI Retreat at the address of #660, State Route 11, Hunlock Creek, Pa., 18621-9580. I presently am assisting inmate Phan Hue listed as the Plaintiff in the within matter.

I am familiar with the facts and circumstances surrounding this cause of action by reason of my independant investigation, interviews held with the Plaintiff and other person(s) who are familiar with the events described in the Complaint, as well as my review of the relevant law and papers filed in this matter.

The Plaintiff, Phan Hue is seeking relief in the instant cause at issue and other relief for damages, injury, counsel and what ever else this Court deems to be just, proper and appropriate upon a trial by jury." This affidavit is submitted in support of the various forms of relief requested herein all of which are material and necessary to the prosecution of plaintiff's cause.

Exhibit #B⁴

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

[REDACTED], : Civil Action No. 1:-CV-01-1064
Plaintiff, : (Judge Yvette Kane)
v. : (Magistrate Judge Smyser)
JAMES UPDIKE, JOSEPH :
MATALONI, EDWARD O'BRIEN, : JURY TRIAL DEMANDED
DALE HAZLAK :
Defendants. :

**CORRECTIONS DEFENDANTS'
INTERROGATORIES TO PLAINTIFF**

The Corrections Defendants, by and through their undersigned attorney, propound these Interrogatories to the Plaintiff pursuant to Federal Rule of Civil Procedure 33, and Pa.MDLR 33.1 through 33.3. Plaintiff is required to answer these Interrogatories in writing under oath, based upon all information available to him and to his attorneys, agents, or representatives. Plaintiff is also required to serve answers to these Interrogatories within thirty (30) days after service thereof, and to supplement his answers, when necessary, in accordance with Federal Rule of Civil Procedure 26(e) and PaMDLR 33.2.

INSTRUCTIONS

- A. The words "you" or "your" when used herein refer to all Plaintiff(s), their agents, servants and/or employees.
- B. "Identify" when used herein with respect to an individual means to state: (1) the person's full name and present or last known address; and (2) the person's position, employer and employer's address at the time of the events referred to in the Interrogatory.
- C. "Identify" when used herein with respect to an entity other than an individual (e.g. a corporation, partnership, unincorporated association, governmental agency, etc.), or a division or subdivision thereof, means to state the full name and present or last known address of the entity, and, if applicable, the full name and present or last known address of the entity's division or subdivision.
- D. "Document" when used herein means any record, including any object containing written, printed, or magnetically recorded information, a graphic or photographic representation, or sound. "Document" includes the original or any copy of any statement, report, letter, memorandum, book, article, note, blueprint, drawing, sketch, photograph, motion picture, videotape, sound recording. "Document" also includes any card, disc, tape, printout or any other article designed for use with a computer or other word or data processing system.
- E. "Identify" when used herein with respect to a document means to state: (1) the nature of the document (i.e., whether it is a statement, report, etc.); (2) the title of the document, or, if the document has no title, a description of the document; (3) the identity of the person or persons who prepared the document; (4) the identity of the person or persons for whom the document was prepared or to whom the document was directed; (5) the date the document was prepared; and, (6) the identity of the present custodian of the document or any copy of the document.
- F. When the word "incident" is used in these Interrogatories it is to refer to those occurrences alleged in Plaintiff's Amended Complaint.

- G. When the word "Corrections Defendants" is used in these Interrogatories it references to the Department of Corrections employees named as defendants in the Complaint and or Amended Complaint.

1. State the name and address of each school, college, or educational institution you have attended listing the dates of attendance, the courses of study and any degrees or certificates received.

ANSWER: Tôi sẽ trả lời trong tòa và
tôi cần ngoại thông dịch, Vì luật sư của
tôi có mặt ở trong tòa.

2. Have you ever been a party to a lawsuit other than the present one? If so, for each lawsuit state the name of the suit; what your status was therein; the kind of suit involved; the court in which it was filed and the docket number; the date it was filed; whether there was a trial; and the ultimate disposition of the case.

ANSWER:

tôi sẽ trả lời trong tòa
Và tôi cần người thông dịch, vì luật sư
của tôi có mặt ở trong tòa.

3. Have you or anyone acting on your behalf obtained from any person any statement concerning the matters you aver in the Complaint? If so, state: (a) the name and last known address of each person; (b) when, where and by whom and to whom each statement was made, and whether it was reduced to writing or otherwise recorded; (c) state the name and address of any person who has custody of any such statements that were reduced to writing or otherwise recorded; and (d) please consider this a request to provide those statements referred to in the above answer.

ANSWER: Tôi sẽ trả lời trong tòa
và tôi cần ngoại thông dịch, với luật sư
của tôi có mặt ở trong tòa.

4. Have you given any statement concerning this action or its subject matter? If so, state: (a) the name and the last known address of each person to whom a statement was given; (b) when and where each statement was given; and (c) please consider this a request to produce any and all statements in the above answer.

ANSWER: Tôi sẽ trả lời trong tòa
và tôi cần người thông dịch, với luật sư
của tôi có mặt ở trong tòa.

5. Have you filed any grievances relating to the matters you aver in your Complaint? If so, state a) date of grievance; b) who grievance addressed to; c) response received; d) if an appeal was filed; e) response(s) to appeal(s); and f) please consider this a request to provide copies of those grievances and responses thereto referred to in the above answer.

ANSWER: Tôi sẽ trả lời trong tòa và tôi
cần người thông dịch, với Luật ^{của tôi}sẽ có mặt
ở trong tòa.

6. Please state the names, home addresses, business addresses (if any) and job classification of all persons whom you intend to call as non-expert witnesses on your behalf at the trial of this case.

ANSWER: Tôi sẽ trả lời trong tòa và
tôi cần người thông dịch, với luật sư
của tôi có mặt trong tòa.

7. If you know of any person believed or understood by you to have any knowledge of your health care and medical condition(s), not affiliated with the Department of Corrections, during the time period that is subject of this action, identify each person including his/her name, present or last known address, telephone number, and his/her location during the time period in question.

ANSWER: Tôi sẽ trả lời trong tòa và
tôi cần người không dịch, vì luật sa của
tôi có mặt trong tòa.

8. State the date(s) and event(s) when you feel you received misconduct reports by the Department of Corrections Defendants as a direct result of pursuing action on the claims alleged in your Complaint. Please include copies of those misconduct report referred to in response to the above question.

ANSWER:

Tôi sẽ trả lời trong tòa và tôi
câu người không dịch, với luật Sá của tôi
có mặt trong tòa.

9. Identify anyone you have received information from that the Corrections Defendants were deliberately indifferent or negligent in attending and treating your medical needs including the qualification of that person, description of the information received, the date the information was received, a description of the facts upon which the information was based, whether a record was made of the information, and if so the name and address of the person who has such record, and provide a copy of the record.

ANSWER: Tôi sẽ trả lời trong tòa và
tôi cần người thông dịch, và luật sư của
tôi có mặt trong tòa.

10. Identify each injury (medical, physical and/or psychological) you claim to have suffered as a result of the alleged deliberate indifference of the Corrections Defendants to your medical needs including: (a) its nature, extent, and how it was caused; and (b) the date it was caused.

ANSWER:

Tôi sẽ trả lời trong tòa và
tôi cần người thông dịch, và luật sư
của tôi có mặt trong tòa.

11. If it is your contention that the Corrections Defendant Mataloni violated your Eighth Amendment rights involving cruel and unusual punishment, please: (a) identify the facts supporting your contention; (b) identify any documents containing facts supporting your contention; (c) identify each individual who has knowledge of a fact supporting that contention; (d) identify each individual who will testify to the facts supporting that contention; and (e) provide a summary of the substance of the testimony of each individual identified in (d) above.

ANSWER:

Tôi sẽ trả lời trong tòa và tôi
cần người không dịch, với luật sư của
đối có mặt trong tòa.

12. If it is your contention that the Corrections Defendant O'Brien violated your Eighth Amendment rights involving cruel and unusual punishment, please:
(a) identify the facts supporting your contention; (b) identify any documents containing facts supporting your contention; (c) identify each individual who has knowledge of a fact supporting that contention; (d) identify each individual who will testify to the facts supporting that contention; and (e) provide a summary of the substance of the testimony of each individual identified in (d) above.

ANSWER: Tôi sẽ trả lời trong tòa và
tôi cần người thông dịch, rất hối hả
của tôi có mặt trong tòa.

13. If it is your contention that the Corrections Defendant Hazlak violated your Eighth Amendment rights involving cruel and unusual punishment, please: (a) identify the facts supporting your contention; (b) identify any documents containing facts supporting your contention; (c) identify each individual who has knowledge of a fact supporting that contention; (d) identify each individual who will testify to the facts supporting that contention; and (e) provide a summary of the substance of the testimony of each individual identified in (d) above.

ANSWER: Tôi sẽ trả lời trong tòa và
tôi cần ngoại không dịch, với luật sa
của tôi có mặt ở trong tòa.

14. If it is your contention that any Corrections Defendants violated your Fourteenth Amendment rights involving due process concerns, please: (a) identify the individual(s) involved; (b) identify the facts supporting your contention; (c) identify any documents containing facts supporting your contention; (d) identify each individual who has knowledge of a fact supporting that contention; (e) identify each individual who will testify to the facts supporting that contention; and (f) provide a summary of the substance of the testimony of each individual identified in (e) above.

ANSWER:

Tôi sẽ trả lời trong tòa và
đối cần ngoài thông dịch, rồi luật sư
của tôi có mặt trong tòa.

15. State the name, address, and telephone number of any and all persons who prepared or assisted in the preparation of answers to these Interrogatories.

ANSWER: Tôi sẽ trả lời trong tòa và tôi
cần người thông dịch, và luật sư của
tôi có mặt ở trong tòa.

Office of General Counsel

by Marsha M. Davis

Marsha M. Davis

Assistant Counsel

Attorney Id. No. 28018

Pennsylvania Department of Corrections

55 Utley Drive

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Dated: April 1, 2002